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EXAMINER

NORDMEYER, PATRICIA L

ART UNIT	PAPER NUMBER
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1772

9  
DATE MAILED: 10/09/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/745,645

Applicant(s)

MILEWSKI ET AL.

Examiner

Patricia L. Nordmeyer

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 19 July 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 13-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-25 is/are rejected.
- 7) ☒ Claim(s) 25 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 25 objected to because of the following informalities: claim 25 is dependent on claim 11, which was cancelled, and therefore has incorrect dependency. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 23 recites the limitation "covering plane" in claim 13. There is insufficient antecedent basis for this limitation in the claim. Claim 13 does not mention a plane in the claim language.

4. Claims 14, 15, 17 - 21 and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase "transitional areas extending to the plane of the floor covering" in claim 17 is unclear, which renders the claim vague and indefinite. It is unclear from the claim language what is being described with the above phrase, if the projection is attached to the floor covering

Art Unit: 1772

by the sides of the square or prism or if the transitional areas are something totally separate from the square or prism.

The phrase "distance therebetween" in claims 18 and 20 is unclear, which render the claims vague and indefinite. It is unclear from the claim language between what two items the distance is being measured.

The phrase "a distance between" in claim 19 is unclear, which renders the claims vague and indefinite. It is unclear from the claim language between what two items the distance is being measured.

The phrases "largest measurement" and "size measurement" in claim 23 are unclear, which renders the claim vague and indefinite. It is unclear from the claim language, what is being referred to by "largest measurement" and "size measurement", a dimension of the projections such as diameter or width.

5. The term "essentially" in claims 14, 15 and 21 is a relative term which renders the claim indefinite. The term "essentially" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Correction/clarification is required.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 13 – 16, 18 – 21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stockl (USPN 3,699,926).

Stockl discloses projections on two sides where the projections are cylindrical, polygonal, oblong or hemispherically shaped (Column 2, lines 57 – 61 and Column 4, claim 2) with heights less than 1/3 of their diameter (Figure 2, #3) and offset from each other and do not overlap (Figure 2 and 3, #2 and 3) with grid sizes that correspond with one another (Figure 3, #2 and 3) in a rubber floor mat, resilient material, (Column 2, lines 61 – 63). The second projections on the underside of the floor covering are equivalent to the distance between the projections (Figure 1, #2). The third projection that is formed by the applied pressure has a different size and smaller height, is be formed on a grid that is off set from the grids of the first and second projections (the projection is formed in between the second projections) and the projection's dimensions are less than  $\frac{3}{4}$  of the distance between the projections and the height is between  $\frac{1}{5}$  and  $\frac{1}{2}$  of the diameter (Figure 2).

Art Unit: 1772

Stockl discloses the claimed invention except that the third projection on the underside surface is formed when pressure is applied to the top surface of mat (Figure 2) instead of having the third projection already formed. The presence of the first projection on the underside surface (Figure 2, #2) show that the formed third projection is an equivalent structure known in the art. Therefore, because these two were art recognized at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute the already formed projection for the one formed when pressure is applied to the mat for the purpose of forming a mat that is soft and flexible, supports heavy loads, removes liquids from underneath the surface and gives traction to animals and attendants while walking on it.

It is well settled that a particular shape of a prior invention carries no patentable weight unless the applicant can demonstrate that the new shape provides significant unforeseen improvements to the invention. See *In re Seid*, 161 F.2d 229, 73 USPQ 431 (CCPA 1947) Also, see *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966) In the instant case, the application does not indicate any new, significant attributes of the invention due to its shape which would have been unforeseen to one of ordinary skill in the art. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to change the shape of the protrusions on the surfaces of the flooring cover. One skilled in the art would have been motivated to do so in order to change the outward appearance of the flooring covering.

8. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stockl in view of Myrvold (USPN 5,619,382).

Art Unit: 1772

Stockl discloses the claimed rubber floor mat with projections above except for the second projections having the form of a square prism or frustum with rounded edges and transitional areas to the cover plane and the third projections having the form of a spherical segment.

Myrvold teaches protrusions on the bottom surface where the edges are rounded and a transitional period exists between the projection and the bottom surface (Figure 9, #202A, Figure 11, #202A and Column 6, lines 50 – 57) in a mat for covering the floor for the purpose of protection against dampness from a concrete floor.

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the protrusions with rounded edges and transitional period in Stockl in order to protect against dampness from a concrete floor as taught by Myrvold.

9. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stockl in view of Dungal (USPN 4,329,981).

Stockl discloses the claimed rubber floor mat with projections above except the first projections being formed by superimposition of a larger spherical segment and a small spherical segment mounted on the larger segment.

Dungl teaches projections of a spherical shape with smaller spherical segments attached to it (Figure 3) on the top surface of a foot massage mat formed from rubber (Column 1, lines 5 – 7) for the purpose of massaging the foot of the user as they walk over the projections on the surface.

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the spherical segments with the smaller spherical segments attached to it in Stockl in order to massage the foot of the user as they walk over the projections on the surface as taught by Dungl.

10. Claims 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stockl in view of Dickens et al (USPN 4,478,901).

Stockl discloses the claimed rubber floor mat with projections above except for at least one perforation provided between the first and second projections and recesses formed in the underside and the perforations and the recesses having a circular cross-section and cross-section of a segment.

Dickens et al. teaches perforations with a circular cross-section (Figures 1 and 2, #14), forming recesses in the underside of the mat (Figure 5) in a mat with projections (Figure 2, #16) for the purpose of constructing a light weight, durable mat with antiskid properties which allows the drainage of liquids away from the surface of the mat.



It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the perforations in the surface in Stockl in order to construct a light weight, durable mat with antiskid properties which allows the drainage of liquids away from the surface of the mat.

***Response to Arguments***

11. Applicant's arguments with respect to claims 1 - 12 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Art Unit: 1772

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia L. Nordmeyer whose telephone number is (703) 306-5480. The examiner can normally be reached on Mon.-Thurs. from 7:00 -4:30 p.m. & alternate Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on (703) 308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Patricia L. Nordmeyer  
Examiner  
Art Unit 1772

*pln*  
pln

October 2, 2002

*Harold Pyon*  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
*1772*

*10/8/02*